

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

HEARING DATE: May 7, 2024
HEARING TIME: 10:00 am
HEARING PLACE: Utica, NY

IN RE: ASHLEY M. DERBY

Debtor

ATTORNEY'S AFFIRMATION

Case No. 21-60506

Chapter 7

The affirmation of James F. Selbach, Esq., made under penalties of perjury, states as follows:

1. I am the attorney for Debtor. I make this affirmation in support of the application for an order of this Court, pursuant to 11 U.S.C. §524, (1) finding a violation of the discharge injunction, (2) imposing sanctions and monetary penalties, (3) awarding attorneys' fees to counsel for Debtor, (4) awarding actual damages to Debtor, and (4) awarding the costs of this motion.
2. This contested matter is being commenced to (1) vindicate the right to be free from the harassment of creditor demands, (2) preserve the integrity of the discharge injunction, and (3) recover actual damages, including attorneys' fees as set forth herein.
3. The Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on June 16, 2021. The Court issued a discharge order on September 27, 2021 and the case was closed. It has since been reopened by order of this Court.
4. At the commencement of the case, the Debtor was the owner of certain real property located at 3119 County Route 4, Fulton, New York. ("the Property").
5. Newrez, LLC, d/b/a Shellpoint Mortgage Servicing ("Newrez") held a duly perfected mortgage lien on the Property, and had notice from the Court of the commencement of the case.
6. On September 13, 2021, Newrez obtained an order of this Court lifting the automatic stay. See Exhibit A.
7. On January 5, 2024, the Property was sold at a foreclosure sale for \$1,000.00. See Exhibit B.
8. Newrez has served the Debtor with a Notice of Motion for Deficiency Judgment. See Exhibit C.

9. The conduct of Newrez against Debtor threatens the integrity of the discharge injunction, and constitutes a violation of the discharge injunction.
10. Newrez denied Debtor the right to be free of creditor collection pressure guaranteed by the Bankruptcy Code.
11. The conduct of Newrez has denied Debtor the right to a fresh start, provided by the Bankruptcy Code.
12. Therefore an order of this Court is requested, as against Newrez:
 - (1) finding a violation of the discharge injunction ;
 - (2) imposing sanctions and monetary penalties;
 - (3) awarding attorneys' fees to counsel for Debtor;
 - (4) awarding actual damages to Debtor;
 - (4) awarding the costs of this motion.

DATED: Syracuse, New York
April 3, 2024

SELBACH LAW OFFICES, P.C.

By: /s/ James F. Selbach
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